

REMARKS

Claims 1, 2, and 4-30 are pending in this application.

Applicant has added new claims 29 and 30. The presentation of these claims does not introduce any new matter.

Applicant appreciates the Examiner's allowance of claim 20, as well as the indication that claims 9-14, 16, 17, 19, and 25-28 define allowable subject matter. Applicant's response to the anticipation rejection set forth in the Office Action is set forth below.

Applicant respectfully requests reconsideration of the rejection of claims 1, 2, 4-8, 15, 18, and 21-24 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,111,809 to Gamble et al. ("Gamble"). As will be explained below, the Gamble reference does not disclose each and every feature specified in independent claims 1 and 21.

The Gamble reference discloses a breathing apparatus for use in a hostile environment. Applicant respectfully submits that the Gamble reference does not disclose the claimed "means for assisting expansion" of the counterlung (independent claim 1) or the secondary chamber (independent claim 21). In the device shown in the Gamble reference, the counterlung is formed from the first variable volume chamber 20 and the second variable volume chamber 34. An oxygen inlet line 36 provides gas to the second variable volume chamber 34 from compressed gas source 14. In contrast with the Examiner's apparent characterization of the Gamble device, the gas supplied to the chamber 34 does not cause this chamber to expand. Rather, as stated at column 4, lines 60-61, oxygen is admitted to chamber 34 only when this chamber expands. In the Gamble device, the expansion of chamber 34 is caused by the expansion of first variable volume chamber 20 under the exhalation force of the user. Thus, the Gamble device does not perform the specified function of "assisting expansion" of the counterlung or secondary chamber. The expansion of both

chamber 20 and chamber 34 is caused solely by the exhalation force of the user, and gas will be provided to chamber 34 only when this chamber is expanded.

In support of the foregoing, Applicant directs the Examiner's attention toward spring 52 and valve 38 in the Gamble device. Valve 38 opens to let gas escape into chamber 20 when there is sufficient pressure in chamber 34. However, if chamber 34 were to assist expansion, then there would need to be some build up of pressure. Thus, it does not seem that the gas supplied to chamber 34 can assist expansion, because as soon as the pressure in chamber 34 built up to a level sufficient to assist expansion, valve 38 would open and the gas (and hence the assisting pressure) would escape. In this regard, Applicant notes that the breathing apparatus of Gamble is not for underwater use and therefore does not require any means for assisting expansion of the counterlung. In the event the Gamble apparatus were to be used underwater, then the hydrostatic influence would create difficulty with breathing because of the force required to expand and contract the counterlung. In contrast, the claimed breathing apparatus, which is suitable for underwater use, includes means for assisting expansion of the counterlung.

Applicant further notes that 35 U.S.C. § 112, sixth paragraph, states that a claim feature specified in means-plus-function format "shall be construed to cover the corresponding structure...described in the specification and equivalents thereof." See M.P.E.P. § 2181. As set forth in the Office Action, the Examiner's anticipation rejection of claims 1, 2, 4-8, 15, and 21-24 does not address the issue of whether the Gamble reference discloses structure for performing each of the specified functions that is either the same as or the equivalent of the corresponding structure described in the subject application. In light of this omission, Applicant respectfully submits that the reasoning set forth in the Office Action in support of the anticipation rejection is insufficient to establish that the Gamble reference discloses the features specified in independent claims 1 and 21 using means-plus-function language.

Accordingly, for at least the foregoing reasons, independent claims 1 and 21 are patentable under 35 U.S.C. § 102(b) over Gamble. Claims 2, 4-8, and 15, each of which ultimately depends from claim 1, and claims 22-24, each of which depends from claim 21, are likewise patentable under 35 U.S.C. § 102(b) over Gamble for at least the same reasons set forth regarding the applicable independent claim.

As noted above, Applicant has added new independent claims 29 and 30. New claim 29 corresponds to claim 9 written in independent format. New claim 30 corresponds to claim 10 written in independent format. In light of the Examiner's indication that claims 9 and 10 define allowable subject matter, Applicant respectfully submits that claims 29 and 30 are in condition for allowance.

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of claims 1, 2, 4-19, and 21-28, and examination of claims 29 and 30, and submits that these claims are in condition for allowance, together with allowed claim 20. Accordingly, a notice of allowance is respectfully requested. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 749-6902. If any additional fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees to Deposit Account No. 50-0805 (Order No. MEWBP001).

Respectfully submitted,
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